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Before the
FEDERAL HIGHWAY ADMINISTRATION
U.S. DEPARTMENT OF TRANSPORTATION

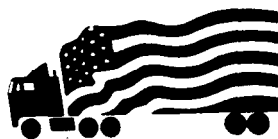
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FEDERAL HIGHWAY ADMINISTRATION
WASHINGTON, DC

FHWA-97-2180-20

Comments of
AMERICAN TRUCKING ASSOCIATIONS
On
FEDERAL MOTOR CARRIER SAFETY REGULATIONS;
TRANSPORTATION OF HAZARDOUS MATERIALS

FHWA Docket No. MC-92-4
Federal Register [Vol. 58 No. 115, June 17, 1993]



**Without Trucks
America Stops**



FOREWORD

The American Trucking Associations (ATA), with offices located at 2200 Mill Road, Alexandria, Virginia 22314, is a federation with affiliated associations in every state and the District of Columbia. In the aggregate, **ATA** represents every type and class of motor carrier operation in the country, both for-hire and private.

The **ATA** Safety Department is charged with the responsibility of reviewing legislative and regulatory actions proposed by any jurisdiction within the United States. The Safety Department solicits industry views and develops and submits, in rulemaking proceedings, comments reflecting trucking industry policy. It has also submitted comments to final rules and petitions for regulatory amendments to enhance safe motor carrier operations and overall highway safety. Additionally, the Safety Department develops educational materials and programs which assist motor carriers in meeting their responsibilities for regulatory compliance and safe operations.

ATA files these comments in response to the Federal Register Notice of Proposed Rulemaking, Thursday, June 17, 1993 [Volume 58, No 115, pg. 334181; Department of Transportation, Federal Highway Administration [Docket No. **MC-92-4**].

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I. INTRODUCTION

The American Trucking Associations (**ATA**) is pleased to comment on the Federal Highway Administration's (FHWA) proposed rules on Motor Carrier Safety Permits. Motor carrier safety is a primary concern of **ATA**. We strive to make transportation of all commodities a safe and efficient activity.

Hazardous materials transportation is of specific concern as it poses greater risks than non-hazardous freight to people and the environment. We supported the concept of motor carrier safety permits in the formative days of the Hazardous Materials Transportation and Uniform Safety Act of 1990 (HMTUSA) which amended the Hazardous Materials Transportation Act (HMTA). And, we continue to support the concept of motor carrier safety permits as proposed by FHWA in Docket MC-92-4.

ATA supports the approach to motor carrier permits that FHWA proposes in MC-92-4. Moreover, we are pleased to see that FHWA has embraced Congressional intent as codified in the HMTUSA without placing undue burdens upon the motor carrier industry. In total, the proposed motor carrier safety permitting process appears to be a reasonable approach to attaining the goal of safe transportation of hazardous materials.

II. SPECIFIC COMMENTS

Following are comments on a specific area of the proposed rules which needs to be addressed by FHWA.

1. Issue 1: The Administrator has not carried forward Congressional intent to include shippers in the motor carrier safety permit **"enforcement"** process.

Discussion: The HMTA at 49 U.S.C. 1805(d)(3) states, **"SHIPPER'S RESPONSIBILITY** - Each person who offers a hazardous materials for motor vehicle transportation in commerce may offer that material to a motor carrier only if the carrier has a safety permit issued under this subsection authorizing such **transportation.**" The language is **not ambiguous--** Congress intended shippers of hazardous materials to be included in the compliance process.

Moreover, the legislative history of this provision clearly reflects Congress' intent to have the Secretary establish regulations to assure shipper compliance with the requirement that they use only motor carriers with valid safety permits. For instance, the House Committee on Energy and Commerce emphasized: **"The** Committee believes this is a crucial adjunct of the safety permit program. Without such a requirement, implementation of the safety permit program would have little or no effect. ... It is intended that the Secretary will establish appropriate regulations setting forth a mechanism upon which shippers may in good faith rely on complying with this requirement." H.R. Rep. No. 101-444, **101st** Congress, 2d Sess., pt.1 at 44 (1990).

Congress' intent is not carried forward into **FHWA's** proposed rules. There needs to be a section added to the NPRM that would require shippers to assure motor carrier compliance with the regulations. Also, the NPRM should reflect sanctions that could be placed on shippers who utilize non-permitted motor carriers for transporting covered materials.

ATA concurs with the opinion of National Tank Truck Carriers (NTTC) as stated in their comments to Docket **MC-**

92-4. The final rule should contain appropriate corrections and amendments to include shipper responsibilities and sanctions for utilization of non-permitted motor carriers.

Recommendation: FHWA should amend § 397.37 to include the following: **"No** person shall offer for transportation or otherwise cause to be transported by a motor carrier, **any** high risk hazardous material, in interstate, intrastate, or foreign commerce, unless such person has possession of a copy of the safety permit issued to the motor carrier performing such transportation. The copy of the safety permit must be obtained from the motor carrier by the shipper at or before the time the shipment is tendered for **transportation.**"

ATA appreciates this opportunity to comment on Docket MC-92-4. Should you have any questions regarding these comments, please contact Paul Borngardner at 703-838-1849.